

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 21091 of 2003

Between:

P.Veman S/o Kistaiah
Retired Deputy Collector, Chinnor
Adilabad District

..... PETITIONER

AND

- 1 The Government Of A.P., Rep By Its Secretary
Revenue Department Secretariat
Hyderabad
- 2 Commissioner of Land Revenue
Govt.of A.P., Hyderabad
- 3 The Special Collector Srsp
Srisailem Project Tarnaka
Hyderabad
- 4 Director Treasuries And Accounts
A.P.,Hyderabad

.....RESPONDENT(S)

Petition under article 226 of the constitution of India praying that in the circumstances stated in the affidavit filed herein the high court will be pleased to examine the records relating to g.o.ms.no.827 revenue (SERT) department dated 15-6-96 of the 1st respondent and of the memo No.a3/3701/95 dated 18-7-96 of the 3rd respondent and the orders of the Honourable Tribunal in o.a.no.4584/96 dated 19-8-2003, declare that the same are illegal, void and contrary to the statutory rules, arbitrary and violative of principles of natural justice as well as articles 14 and 16 of the constitution of India, and consequently issue a writ of mandamus, or any other appropriate writ, order and direction, setting aside the above mentioned orders of the 1st and 3rd respondent as well as the A.P.Administrative Tribunal's order and pass such other orders in the circumstances of the case.

Counsel for the Petitioner: MR.RAMA RAO PHILKHANA

Counsel for Respondents: GP FOR SERVICES II

The Court Made the Following :

JUDGMENT:

(per the Hon'ble Sri Justice G.Bikshapathy)

1. This Writ Appeal is filed assailing the order passed by the A.P. Administrative Tribunal in O.A.No. 4504 of 1996 dated 19.8.2003.
2. The case of the petitioner is that he was directly recruited as Revenue Inspector in the year 1951 in the Government of Andhra Pradesh, Revenue Department. Subsequently he promoted as UDC, Deputy Tahsildar, Tahsildar, and Deputy Collector. During the period from 25.5.1984 to 27.5.1985 he worked as Special Deputy Collector, Rehabilitatin-cum-Land Acquisition at Sriram Sagar Project at Karimnagar. While working as Deputy Collector he retired form service on 31.1.1990. After his retirement from service, a charge memo No. 22/BCE/90-2 dated 30.6.1990 was served on the petitioner on 20.8.1990 alleging that he had committed certain irregularities in disbursing the amount to the land oustees during the period from 25.5.1984 to 23.5.1985 and that he has indulged in gross misconduct and failed to maintain absolute integrity and devotion to duty. The petitioner submitted his explanation to the said charge memo. However, the Government under G.O.Ms No. 287 dated 15.6.1996, passed the order imposing punishment of 7% cut in pension and also in A3/3701/96 dated 18.7.1996, the Special Collector, SRSP & SLBC, DCC Tarnaka dated 18.7.1996 passed an order directing recovery of sum of Rs. 1,22,781.16 ps. The said orders came to be challenged by the petitioner in O.A.No.

4504/96. The Tribunal however, dismissed the O.A by an order-dated 19.8.2003. Against the said order, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner submits that the order of the Tribunal is wholly illegal and un-sustainable. The learned counsel would submit that the very initiation of disciplinary proceedings under Rule 9 of Revised Pension Rules, 1980 are not maintainable inasmuch as the incident referred to falls beyond the limitation prescribed under Rule 9(2)(b)(ii) of Revised Pension Rules, 1980. Therefore, on this ground alone, without going into the merits of the case, the Tribunal ought to have allowed the O.A and granted the relief as prayed for.

4. On the other hand the learned Government Pleader, however, submits that the above point was never argued before the Tribunal and the Tribunal has made a categorical note of counsel's absence and therefore, it will not be open for him to adjudicate the matter before this court having not challenged the same before the Tribunal.

5. We have heard the learned counsel appearing for the petitioner and also the learned Government Pleader appearing for Services II.

6. It is not in dispute that the order of punishment was passed on 15.6.1996 under G.O.Ms.No. 287 and also recovery was ordered by the Special Collector on 18.7.1996. Even in O.A, on the charge memo, the petitioner was taken a specific ground that the disciplinary proceedings are not maintainable in view of the Limitation prescribed under Rule 9 (2)(b)(ii). It is true that the petitioner counsel did not represent the matter and no contention has been raised before the Tribunal. Since it is a pure question of law, which goes to the root of the matter, we are of the considered opinion that OA ought not to have been thrown out without considering the said formidable legal issue.

7. Coming to the question of maintainability of the charge, it is

necessary to refer Rule 9(2)(b) which is extracted hereunder.:

“9. Right of Government to withhold or withdraw pension:

(1) The State Government reserves themselves the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused, to the Government and to the local authority if, in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that the Andhra Pradesh Public Service Commission shall be consulted before any final orders are passed;

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) of Rule 45

(2) (a) The departmental proceedings referred to in sub-rule(1), if instituted while the Government servant was in service whether before his retirement or during his re-employment shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that whether the departmental proceedings are instituted by an authority subordinate to the State Government, that authority shall submit a report recording its findings to the State Government.

(b) The Departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment:

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any

event which took place more than four years before such institution; and

- (iii) shall be conducted by such authority and in such place as the State Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service."

(3) XXX (omitted by GOMs No. 302, Fin., Dt.30.8.1994).

(4) In the case of a government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 52 shall be sanctioned.

- (5) Where the State Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule---

- (a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner or if the Government servant has been placed under suspension from an earlier date, on such date; and
- (b) judicial proceedings shall be deemed to be instituted---
 - (i) in the case of criminal proceedings, on the date on which the complaint or report

of a police officer, of which the Magistrate takes cognizance, is made; and

- (ii) in the case of civil proceedings, on the date the plaint is presented in the Court.

(7) (a) when a Government servant dies before conclusion of the disciplinary proceedings, generally death abates all further proceedings. As such, when Government servant dies before conclusion of the disciplinary proceedings, the proceedings under Rule 9 of the Andhra Pradesh Revised Pension Rules, 1980 also abates. If any loss caused or misappropriated the Government amount by the deceased Government servant is established, in such cases, the disciplinary proceedings will not automatically abate and it is open to the Government to bring the legal representatives on record and conclude disciplinary proceedings for the purpose of recovery of the same.

(b) when disciplinary proceedings are concluded as per the procedure and Government servant/pensioner dies before receiving punishment order and any loss caused or misappropriated the Government amount due to his negligence or misconduct while he was in service, is established, the same can be recovered from terminal benefits admissible to the legal heirs. The recovery in such cases shall be from the terminal benefits ie. Retirement Gratuity, Commuted Value of Pension, Encashment of leave.

(c) In cases of Punishment of stoppage of increment without cumulative effect, which could not be implemented due to lack of service, or otherwise, the amount equal to the increments

stopped, shall be recovered from the Retirement Gratuity of the employee;

(Provided that the consultation with the Andhra Pradesh Public Service Commission shall not be necessary for taking action under this sub-rule.)

8. Admittedly, in the instant case, the charge memo was dated 30.6.1990 and it was alleged to have been served on the petitioner on 20.8.1990. But taking the date of the charge memo, with reference to the explanation furnished under the Rules, the time has to be reckoned from the date of issuance of the charge memo i.e. from 30.6.1990. As per Clause (b)(ii), two conditions have to be complied with before initiation of the departmental proceedings with regard to the retired employees. First condition is that it must be instituted after proper sanction of the Government and the second and important condition is that the charge shall not relate to any event, which has taken place more than four years before the institution of the charge memo. The substance of the charge itself is extracted below:

“That you, Sri. P. Vaman Rao, while functioning as Special Deputy Collector, Rehabilitation cum L.A Unit, SRSPMB Colony, Karimnagar during the period from 25.5.1984 to 9.5.1985 indulged in gross misconduct and failed to maintain absolute integrity and devotion to duty by deliberately adding fictitious or ineligible persons as shareholders inasmuch as you have made payments to the ineligible shareholders by treating each of them as independent families in the villages coming undue submergence while in fact they were not eligible in accordance with the government orders to receive cash grants, thus causing huge loss to the government as cited in the

enclosed statement and thus contravened
sub rule 3(i) of the Andhra Pradesh Civil
Services (Conduct) Rules, 1964”

9. As can be seen from the above charge memo, the irregularities are relate to the period from 1984-85. In which event, the charge memo ought to have been issued within four years. But in the instant case, the charge memo issued in the year 1990, beyond the limitation prescribed under the aforesaid sub-rule.

10. Under those circumstances, without going into the merits of the case, we find that the initiation of disciplinary proceedings are misconceived as the same are bared by time fixed in sub-rule (2)(b)(ii) of Rule 9. Thus the Tribunal has not considered this aspect and proceeded with the case on merits.

11. Under those circumstances, the Writ Petition is allowed and the impugned order passed by the Tribunal in O.A.No. 4504 of 1996 dated 19.8.2003 is set aside. Consequently, the order passed under G.O.Ms.No. 287 dated 15.6.1996 and the memo No. A3/3701/96 dated 18.7.1996 issued by the Special Collector,

SRSP &SLBC DCC, Tarnaka, Hyderabad shall stand quashed. No costs.

G. BIKSHAPATHY, J

B. SESHASAYANA REDDY, J

DATED: 23.06.2004

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ASSISTANT REGISTRAR

One fair copy to the Hon'ble Sri Justice G. Bikshapathy (for his Lordships kind perusal)

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- 1 The Government Of A.P., Rep By Its Secretary
Revenue Department Secretariat
Hyderabad
- 2 Commissioner Of Land Revenue
Govt.Of A.P., Hyderabad
- 3 The Special Collector Srsp
Srisailam Project Tarnaka
Hyderabad
- 4 Director Treasuries And Accounts
A.P.,Hyderabad
5. 2 CCs to G.P for Services II, High Court Buildings, High Court of A.P,
Hyderabad. (OUT)
6. 2 CD copies.